

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION**

HOLLIS CHADWICK SMITH,

Petitioner,

v.

SHERIFF NICK SMITH,

Respondent.

Case No. 6:23-cv-60-LCB-SGC

ORDER

The *pro se* petitioner, Hollis Chadwick Smith, filed this matter on the form used to assert habeas claims under 28 U.S.C. § 2241. (Doc. 1). On February 16, 2023, the magistrate judge entered a report recommending Smith's claims be dismissed for lack of jurisdiction because they challenged the conditions of his confinement, not the fact or duration of his sentence. (Doc. 4). Accordingly, the magistrate judge concluded the court lacked jurisdiction to consider his claims under § 2241; the report recommended dismissal without prejudice to Smith's right to file a complaint under 42 U.S.C. § 1983 based on the same facts. (*Id.* at 4).

The petitioner has objected to the report and recommendation. (Doc. 5). The objections confirm that Smith's claims do not sound in habeas corpus. Indeed, Smith reiterates that his claims are based on allegations of excessive force and denial of medical care; these allegations go toward the conditions of confinement, not the fact

or duration of confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Similarly, Smith's objections include demands for monetary damages—relief unavailable via habeas corpus. Accordingly, Smith's objections reinforce the magistrate judge's conclusion that the court lacks jurisdiction to consider his claims under § 2241. To the extent the objections may seek to convert this matter to a § 1983 lawsuit, the court declines any such invitation. If Smith wishes to pursue such claims, he must complete and file a § 1983 complaint form and either pay the \$402.00 filing and administrative fee or file a motion for leave to proceed *in forma pauperis*.

For the foregoing reasons, and after reviewing *de novo* the record as a whole, the Court **OVERRULES** Smith's objections (Doc. 5), **ADOPTS** the magistrate judge's recommendation (Doc. 4), **DISMISSES** Smith's petition without prejudice, and **DENIES** as moot Smith's motion for leave to proceed *in forma pauperis* (Doc. 2). The Clerk of Court shall close this case.

DONE and ORDERED March 30, 2023.

A handwritten signature in black ink, appearing to read 'L.C. Burke', is written over a horizontal line.

LILES C. BURKE
UNITED STATES DISTRICT JUDGE